

EXHIBIT 16

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
:
: (Jointly
Debtors : Administered)

- - -

Friday, May 15, 2009

- - -

Oral deposition of DAVID T.

AUSTERN, ESQUIRE, taken pursuant to
notice, was held at the offices of ORRICK
HERRINGTON & SUTCLIFFE, LLP, Columbia
Center, 1152 15th Street, N.W.,
Washington, DC 20005-1706, commencing at
10:07 a.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

- - -

MAGNA LEGAL SERVICES
Seven Penn Center
1635 Market Street
8th Floor
Philadelphia, Pennsylvania 19103

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 DRINKER BIDDLE & REATH, LLP</p> <p>4 BY: MICHAEL F. BROWN, ESQUIRE</p> <p>5 One Logan Square</p> <p>6 18th & Cherry Streets</p> <p>7 Philadelphia, Pennsylvania 19103-6996</p> <p>8 215.988.2988</p> <p>9 (brownmf@dbr.com)</p> <p>10 (jeffrey.boerger@dbr.com)</p> <p>11 Representing OneBeacon America Insurance</p> <p>12 Company, Seaton Insurance Company,</p> <p>13 Government Employees Insurance Company,</p> <p>14 Columbia Insurance Company f/k/a Republic</p> <p>15 Insurance Company</p> <p>16</p> <p>17 ORRICK HERRINGTON & SUTCLIFFE, LLP</p> <p>18 BY: JONATHAN P. GUY, ESQUIRE</p> <p>19 ROGER FRANKEL, ESQUIRE</p> <p>20 JOSHUA M. CUTLER, ESQUIRE</p> <p>21 Columbia Center</p> <p>22 1152 15th Street, N.W.</p> <p>23 Washington, DC 20005-1706</p> <p>24 202.339.8427</p> <p>(jguy@orrick.com)</p> <p>Representing Future Claimants</p> <p>Representative</p> <p>CAPLIN & DRYSDALE, CHARTERED</p> <p>BY: JEFFREY A. LIESEMER, ESQUIRE</p> <p>One Thomas Circle, NW</p> <p>Suite 1100</p> <p>Washington, DC 20005</p> <p>202.862.5000</p> <p>(jal@capdale.com)</p> <p>Representing Grace, Official Committee of</p> <p>Asbestos Personal Injury Claimants</p> <p>("ACC")</p>	<p>1 APPEARANCES (continued)</p> <p>2</p> <p>3 VORYS, SATER, SEYMOUR AND PEASE, LLP</p> <p>4 BY: WILLIAM J. POHLMAN, ESQUIRE*</p> <p>5 TIFFANY STRELOW COBB, ESQUIRE*</p> <p>6 (*VIA TELECONFERENCE)</p> <p>7 52 East Gay Street</p> <p>8 Columbus, Ohio 43215</p> <p>9 614.464.8322</p> <p>10 (wjpholman@vorys.com)</p> <p>11 (tscobb@vorys.com)</p> <p>12 Representing The Scotts Company, LLC</p> <p>13</p> <p>14 COHN WHITESELL & GOLDBERG, LLP</p> <p>15 BY: CHRISTOPHER M. CANDON, ESQUIRE</p> <p>16 101 Arch Street</p> <p>17 Boston, Massachusetts 02110</p> <p>18 617.951.2505</p> <p>19 (candon@cwgl1.com)</p> <p>20 Representing the Libby Claimants</p> <p>21</p> <p>22 SPEIGHTS & RUNYAN</p> <p>23 BY: DANIEL H. SPEIGHTS, ESQUIRE*</p> <p>24 (* VIA TELECONFERENCE)</p> <p>200 Jackson Avenue East</p> <p>P.O. Box 685</p> <p>Hampton, South Carolina 29924</p> <p>803.943.4444</p> <p>(dspeights@speightsrunyan.com)</p> <p>Representing Anderson Memorial Hospital</p> <p>TUCKER ARENSBERG, P.C.</p> <p>BY: MICHAEL A. SHINER, ESQUIRE*</p> <p>(*VIA TELECONFERENCE)</p> <p>1500 One PPG Place</p> <p>Pittsburgh, Pennsylvania 15222</p> <p>412.594.5586</p> <p>(mshiner@tuckerlaw.com)</p> <p>Representing Certain London Market</p>
Page 3	Page 5
<p>1 APPEARANCES (continued)</p> <p>2</p> <p>3 KIRKLAND & ELLIS, LLP</p> <p>4 BY: THEODORE L. FREEDMAN, ESQUIRE*</p> <p>5 (*VIA TELECONFERENCE)</p> <p>6 Citigroup Center</p> <p>7 153 East 53rd Street</p> <p>8 New York, New York 10022-4611</p> <p>9 212.446.4800</p> <p>10 (theodore.freedman@kirkland.com)</p> <p>11 Representing the Debtors</p> <p>12</p> <p>13 THE LAW OFFICES OF JANET S. BAER, P.C.</p> <p>14 BY: JANET S. BAER, ESQUIRE</p> <p>15 70 West Madison Street</p> <p>16 Suite 2100</p> <p>17 Chicago, Illinois 606002</p> <p>18 312.641.2162</p> <p>19 Representing the Debtors</p> <p>20</p> <p>21 SIMPSON THACHER & BARTLETT, LLP</p> <p>22 BY: ELISA ALCABES, ESQUIRE</p> <p>23 KAREN E. ABRAVANEL, ESQUIRE*</p> <p>24 (*VIA TELECONFERENCE)</p> <p>425 Lexington Avenue</p> <p>New York, New York 10017-3954</p> <p>212.455.3133</p> <p>(ealcabes@stblaw.com)</p> <p>(kabravanel@stblaw.com)</p> <p>Representing Travelers Casualty and</p> <p>Surety Company</p>	<p>1 APPEARANCES (continued)</p> <p>2</p> <p>3 BILZIN SUMBERG BAENA PRICE & AXELROD, LLP</p> <p>4 BY: MATTHEW I. KRAMER, ESQUIRE*</p> <p>5 (*VIA TELECONFERENCE)</p> <p>6 200 South Biscayne Boulevard</p> <p>7 Suite 2500</p> <p>8 Miami, Florida 33131-5340</p> <p>9 305.450.7246</p> <p>10 (mkramer@bilzin.com)</p> <p>11 Representing Property Damage Committee</p> <p>12</p> <p>13 STROOCK & STROOCK & LAVAN, LLP</p> <p>14 BY: DANIEL J. HARRIS, ESQUIRE*</p> <p>15 (*VIA TELECONFERENCE)</p> <p>16 180 Maiden Lane</p> <p>17 New York, New York 10038-4982</p> <p>18 212.806.5400</p> <p>19 (djharris@stroock.com)</p> <p>20 Representing Official Committee of</p> <p>21 Unsecured Creditors</p> <p>22</p> <p>23 CROWELL & MORING, LLP</p> <p>24 BY: MARK PLEVIN, ESQUIRE</p> <p>NOAH S. BLOOMBERG, ESQUIRE</p> <p>1001 Pennsylvania Avenue NW</p> <p>Washington, DC 20004-2595</p> <p>202.624.2913</p> <p>(mplevin@crowell.com)</p> <p>(nbloomberg@crowell.com)</p> <p>Representing Fireman's Fund Insurance</p> <p>(Surety Bond)</p> <p>STEVENS & LEE, P.C.</p> <p>BY: JOHN D. DEMMY, ESQUIRE</p> <p>1818 Market Street, 29th Floor</p> <p>Philadelphia, Pennsylvania 19103-1702</p> <p>215.751.2885</p> <p>(jdd@stevenslee.com)</p>

Page 6	Page 8
<p>1 APPEARANCES (continued)</p> <p>2</p> <p>3 ALAN B. RICH LAW OFFICES</p> <p>4 BY: ALAN B. RICH, ESQUIRE</p> <p>5 Elm Place, Suite 4620</p> <p>6 1401 Elm Street</p> <p>7 Dallas, Texas 75202</p> <p>8 214.744.5100</p> <p>9 (arich@alanrichlaw.com)</p> <p>10 Representing Property Damage FCR</p> <p>11</p> <p>12 CONNOLLY BOVE LODGE & HUTZ, LLP</p> <p>13 BY: JEFFREY C. WISLER, ESQUIRE</p> <p>14 The Nemours Building</p> <p>15 1007 North Orange Street</p> <p>16 P.O. Box 2207</p> <p>17 Wilmington, Delaware 19899</p> <p>18 302.88.6528</p> <p>19 (jwisler@cblh.com)</p> <p>20 Representing Maryland Casualty</p> <p>21</p> <p>22 ECKERT SEAMANS CHERIN & MELLOTT, LLC</p> <p>23 BY: EDWARD J. LONGOSZ, II, ESQUIRE</p> <p>24 1747 Pennsylvania Avenue, NW</p> <p>12th Floor</p> <p>Washington, DC 20006</p> <p>202.659.6619</p> <p>(elongosz@eckertseamans.com)</p> <p>Representing Maryland Casualty and Zurich</p> <p>COZEN O'CONNOR</p> <p>BY: JACOB C. COHN, ESQUIRE</p> <p>1900 Market Street</p> <p>Philadelphia, Pennsylvania 19103-3508</p> <p>215.665.2147</p> <p>(jcohn@cozen.com)</p> <p>Representing Federal Insurance Company</p>	<p>1 - - -</p> <p>2 INDEX</p> <p>3 - - -</p> <p>4</p> <p>5 Testimony of:</p> <p>6 DAVID T. AUSTERN, ESQUIRE</p> <p>7</p> <p>8 By Mr. Brown Page 12, 242</p> <p>9 By Ms. Alcabes Page 95</p> <p>10 By Mr. Candon Page 123, 251</p> <p>11 By Mr. Demmy Page 164</p> <p>12 By Mr. Cohn Page 173</p> <p>13 By Mr. Plevin Page 192</p> <p>14 By Ms. Cobb Page 207</p> <p>15 By Ms. Casey Page 219</p> <p>16 By Mr. Mangan Page 221</p> <p>17 By Mr. Speights Page 222</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 7	Page 9
<p>1 APPEARANCES (continued)</p> <p>2</p> <p>3 CUYLER BURK, P.C.</p> <p>4 BY: STEFANO V. CALOGERO, ESQUIRE</p> <p>5 Parsippany Corporate Center</p> <p>6 Four Century Drive</p> <p>7 Parsippany, New Jersey 07054</p> <p>8 973.734.3200</p> <p>9 (scalogero@cuyler.com)</p> <p>10 Representing Allstate Insurance Company</p> <p>11</p> <p>12 GOODWIN PROCTER, LLP</p> <p>13 BY: BRIAN H. MUKHERJEE, ESQUIRE*</p> <p>14 (*VIA TELECONFERENCE)</p> <p>15 901 New York Avenue, N.W.</p> <p>16 Washington, DC 20001</p> <p>17 202.346.4124</p> <p>18 (bmukherjee@goodwinprocter.com)</p> <p>19 Representing CNA Insurance</p> <p>20</p> <p>21 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC</p> <p>22 BY: KEVIN J. MANGAN, ESQUIRE*</p> <p>23 (*VIA TELECONFERENCE)</p> <p>24 222 Delaware Avenue</p> <p>Suite 1501</p> <p>Wilmington, Delaware 19801</p> <p>302.252.4361</p> <p>(kmangan@wcsr.com)</p> <p>Representing State of Montana</p> <p>PEPPER HAMILTON, LLP</p> <p>BY: LINDA J. CASEY, ESQUIRE*</p> <p>(*VIA TELECONFERENCE)</p> <p>3000 Two Logan Square</p> <p>Philadelphia, Pennsylvania 19103</p> <p>215.981.4000</p> <p>(caseyl@pepperlaw.com)</p> <p>Representing BNSF Railway Company</p>	<p>1 - - -</p> <p>2 EXHIBITS</p> <p>3 - - -</p> <p>4 NO. DESCRIPTION PAGE</p> <p>5 Austern-1</p> <p>6 Amended Notice of Deposition</p> <p>7 Of David T. Austern 31</p> <p>8 Austern-2</p> <p>9 Exhibit 2 to Exhibit Book</p> <p>10 Asbestos PI Trust Agreement 32</p> <p>11 Austern-3</p> <p>12 First Amended Joint Plan of</p> <p>13 Reorganization... 43</p> <p>14 Austern-4</p> <p>15 Exhibit 6 to Exhibit Book</p> <p>16 Asbestos Insurance Transfer</p> <p>17 Agreement 80</p> <p>18 Austern-5</p> <p>19 Exhibit 4 to Exhibit Book</p> <p>20 Trust Distribution Procedures 90</p> <p>21 Austern-6</p> <p>22 Exhibit 10 to Exhibit Book</p> <p>23 Cooperation Agreement 92</p> <p>24 Austern-7</p> <p>Notice of Deposition of</p> <p>David Austern 95</p> <p>Austern-8</p> <p>Debtors' Disclosure Statement</p> <p>for the First Amended Joint</p> <p>Plan of Reorganization... 118</p> <p>Austern-9</p> <p>Notice of Deposition of</p> <p>David T. Austern 124</p>

4 (Pages 10 to 13)

Page 10	Page 12
<p>1 EXHIBITS (continued)</p> <p>2</p> <p>3 NO. DESCRIPTION PAGE</p> <p>4 Austern-10</p> <p>5 Form 8-K 124</p> <p>6 Austern-11</p> <p>7 Exhibit 8 to Exhibit Book</p> <p>8 Best Interests Analysis 156</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 - - -</p> <p>2 PROCEEDINGS</p> <p>3 - - -</p> <p>4 MR. GUY: We will follow the</p> <p>5 federal rules.</p> <p>6 - - -</p> <p>7 DAVID T. AUSTERN, ESQUIRE,</p> <p>8 after having been first duly</p> <p>9 sworn, was examined and testified</p> <p>10 as follows:</p> <p>11 - - -</p> <p>12 EXAMINATION</p> <p>13 - - -</p> <p>14 BY MR. BROWN:</p> <p>15 Q. Good morning, Mr. Austern.</p> <p>16 My name is Michael Brown. I represent</p> <p>17 OneBeacon American Insurance Company,</p> <p>18 Seaton Insurance Company, GEICO, and</p> <p>19 Republic Insurance Company.</p> <p>20 Could you state your full</p> <p>21 name for the record, please?</p> <p>22 A. David Thomas Austern.</p> <p>23 Q. Have you ever been deposed</p> <p>24 before?</p>
Page 11	Page 13
<p>1 - - -</p> <p>2 DEPOSITION SUPPORT INDEX</p> <p>3 - - -</p> <p>4</p> <p>5 Direction to Witness Not to Answer:</p> <p>6 Page Line Page Line</p> <p>7 181 13 225 16</p> <p>8 229 04 239 03</p> <p>9</p> <p>10 Request for Production of Documents:</p> <p>11 Page Line Page Line</p> <p>12 NONE</p> <p>13</p> <p>14</p> <p>15 Stipulations:</p> <p>16 Page Line Page Line</p> <p>17 NONE</p> <p>18</p> <p>19</p> <p>20 Area(s) Marked Confidential:</p> <p>21 Page Line Page Line</p> <p>22 NONE</p> <p>23</p> <p>24</p>	<p>1 A. Yes.</p> <p>2 Q. How many times?</p> <p>3 A. Somewhere between 25 and 30</p> <p>4 times.</p> <p>5 Q. So it's fair to say that you</p> <p>6 are familiar with the protocol for a</p> <p>7 deposition then?</p> <p>8 A. I am.</p> <p>9 Q. Okay. Can you give me a</p> <p>10 summary of your professional background?</p> <p>11 A. I was an assistant district</p> <p>12 attorney in the New York County District</p> <p>13 Attorney's Office for four years; I was</p> <p>14 an assistant United States attorney in</p> <p>15 the United States Attorney's Office in</p> <p>16 Washington, D.C. for four years; I was a</p> <p>17 law professor for two years; I was in the</p> <p>18 private practice of law for something</p> <p>19 like 12 years; and I've been general</p> <p>20 counsel of the Manville Personal Injury</p> <p>21 Settlement Trust, and I have had some</p> <p>22 other asbestos matters for the last 21</p> <p>23 and a half years. That doesn't add up to</p> <p>24 45, and it should, but...</p>

Page 14	Page 16
<p>1 Q. Those are estimates, I take 2 it? 3 A. Those are estimates, yes. 4 Q. What did you do in 5 preparation for today's deposition? 6 A. I reviewed some documents, 7 and I spoke to counsel. 8 Q. What documents did you 9 review? 10 A. I also reviewed some 11 transcripts. 12 I reviewed the Personal 13 Injury Trust Agreement; the Trust 14 Distribution Process -- the Personal 15 Injury Trust Distribution Process; the 16 Transfer Agreement; the Cooperation 17 Agreement; I reviewed Ms. Biggs' latest 18 estimation report; Dr. Peterson's latest 19 report; Dr. Florence's latest report; 20 Dr. Whitehouse's -- one of 21 Dr. Whitehouse's reports -- I am sorry -- 22 two of Dr. Whitehouse's reports; the 23 rebuttal to those reports from Dr. Welsh 24 and Dr. Freedman; the objections filed by</p>	<p>1 thing in preparation of the deposition. 2 I listened to parts of, albeit not all, 3 of the Lockwood deposition. 4 Q. Did you meet with counsel in 5 preparation for the deposition? 6 A. Yes. 7 Q. When? 8 A. Last Friday and yesterday. 9 Q. And for how long last 10 Friday? What period of time did you meet 11 with counsel? 12 A. I confess I don't remember, 13 but it was several hours. 14 Q. And the more recent meeting? 15 A. I would say three hours. 16 Q. Was it just counsel for the 17 Future Claimants' Representative or were 18 other Plan proponent counsel present? 19 A. No. There were no other 20 Plan proponent counsel. 21 Q. In reviewing Mr. Lockwood's 22 deposition testimony, was there anything 23 in his transcript with which you 24 disagreed?</p>
Page 15	Page 17
<p>1 the Libby claimants and by one or more 2 insurance companies, and I am not sure I 3 know which ones; my prior deposition in 4 this case; my prior deposition in the 5 Combustion Engineering case; my testimony 6 in the Combustion Engineering case. I 7 may have left something out, but I think 8 those are most of the documents I 9 reviewed. 10 Q. Okay. And you also 11 mentioned that you had reviewed some 12 transcripts? 13 A. Those were the depositions 14 and trial testimony -- oh, excuse me. 15 Yes. I reviewed Mr. Lockwood's 16 deposition. 17 Q. Did you actually review the 18 Amended Plan of Reorganization? 19 A. Yes -- and excuse me -- and 20 the Disclosure Statement. 21 Q. And over what period of time 22 did you review all these materials in 23 preparation for your deposition? 24 A. Two weeks. I did one other</p>	<p>1 A. I don't remember -- nothing 2 occurs to me, although if you showed me a 3 question and answer, I might say I 4 disagreed. But I don't recall anything. 5 Q. Okay. When you listened in 6 on a portion of the deposition, was there 7 anything that you heard by way of an 8 answer by Mr. Lockwood that struck you as 9 inaccurate? 10 A. Not that I recall. 11 Q. Okay. Now, you mentioned 12 that you had reviewed the Disclosure 13 Statement, the Plan, the PI Trust 14 Agreement I assume you were referring to, 15 the PI Trust Distribution Procedures, the 16 Transfer Agreement, and the Cooperation 17 Agreement? 18 A. Yes. 19 Q. Do you understand all of 20 those documents? 21 A. No. 22 Q. Are there particular 23 documents that you understand better than 24 others?</p>

<p style="text-align: right;">Page 66</p> <p>1 them, I am a fiduciary.</p> <p>2 Q. Okay. And what is the</p> <p>3 nature of your fiduciary duties?</p> <p>4 A. To make sure the Trust has</p> <p>5 sufficient funds and the funds to pay</p> <p>6 them.</p> <p>7 Q. Anything else?</p> <p>8 A. It's more than to just pay</p> <p>9 them. It's to pay them in the same</p> <p>10 manner that people who preceded them were</p> <p>11 paid.</p> <p>12 Q. Is that all future</p> <p>13 claimants?</p> <p>14 A. It's all future personal</p> <p>15 injury claimants.</p> <p>16 Q. Does it matter whether they</p> <p>17 have meritorious claims or not?</p> <p>18 A. Oh, I don't know. I</p> <p>19 haven't -- if it's not a meritorious</p> <p>20 claim -- let me back up a second. These</p> <p>21 claimants are people I have never met,</p> <p>22 and I dare say the day I meet them, they</p> <p>23 are no longer my clients.</p> <p>24 Q. It's a convenient</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Yes. I am just reading from</p> <p>2 Section 5.2.</p> <p>3 A. They are, as I am to some</p> <p>4 extent, an advisor to the trustees who</p> <p>5 are there to protect the rights of</p> <p>6 present claimants.</p> <p>7 Q. Okay. And when you say</p> <p>8 present claimants, all present claimants,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. If you compare the language</p> <p>12 in the second sentence of 6.1 with the</p> <p>13 first sentence in 5.2, the wording is a</p> <p>14 little different.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. What's the reason for the</p> <p>18 different wording, if you know?</p> <p>19 MR. LIESEMER: Object to the</p> <p>20 form of the question.</p> <p>21 MR. GUY: Objection as to</p> <p>22 what difference you are referring</p> <p>23 to.</p> <p>24 BY MR. BROWN:</p>
<p style="text-align: right;">Page 67</p> <p>1 arrangement.</p> <p>2 A. I am principally responsible</p> <p>3 for making sure there are funds available</p> <p>4 to pay them in the same manner in which</p> <p>5 claimants in the FIFO Queue of the Trust</p> <p>6 were paid. In that respect, I have a</p> <p>7 fiduciary obligation to them.</p> <p>8 Q. Okay. Can you turn to</p> <p>9 Section 5.2 of the Trust Agreement, and</p> <p>10 that appears on page 28.</p> <p>11 A. Yes.</p> <p>12 Q. Now, the first sentence of</p> <p>13 Section 5.2 says, "The members of the TAC</p> <p>14 shall serve in a fiduciary capacity</p> <p>15 representing all holders of present PI</p> <p>16 Trust Claims." And we have already gone</p> <p>17 through earlier the members of the TAC:</p> <p>18 Mr. Weitz, Mr. Cooney, Mr. Rice, and</p> <p>19 Mr. Budd.</p> <p>20 Do you have an understanding</p> <p>21 as to what their fiduciary duties are to</p> <p>22 all holders of present PI Trust claims?</p> <p>23 A. All holders of present PI</p> <p>24 Trust claims?</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. In 6.1, it says that</p> <p>2 "he," meaning you, "shall serve in a</p> <p>3 fiduciary capacity," and then it goes on</p> <p>4 to say, "representing the interest of</p> <p>5 holders of future PI Trust Claims..."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And then there is another</p> <p>9 phrase, and it says, "for the purpose of</p> <p>10 protecting the rights of such persons."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Now, if you go to 5.2, that</p> <p>14 latter phrase, "for the purpose of</p> <p>15 protecting the rights of such persons,"</p> <p>16 is not there.</p> <p>17 Is there a reason?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you understand the TAC</p> <p>20 members to have the same fiduciary</p> <p>21 obligations to all holders of present PI</p> <p>22 Trust claims that you have to all holders</p> <p>23 of future PI Trust claims?</p> <p>24 MR. LIESEMER: Object to the</p>

Page 70	Page 72
<p>1 form of the question.</p> <p>2 THE WITNESS: Well, I don't</p> <p>3 think 6.1 says "all," but I will</p> <p>4 accept the way you phrased it.</p> <p>5 BY MR. BROWN:</p> <p>6 Q. Okay.</p> <p>7 A. I can't think of any</p> <p>8 difference, as I sit here now, in terms</p> <p>9 of -- it's a different population, but</p> <p>10 other than that, I can't I can't think of</p> <p>11 any difference.</p> <p>12 Q. You rightly noted that the</p> <p>13 word "all" does not appear in 6.1.</p> <p>14 Is there any particular</p> <p>15 reason for that?</p> <p>16 A. Not that I know of.</p> <p>17 Q. Let me ask you a more</p> <p>18 general question. What is the purpose of</p> <p>19 the TAC?</p> <p>20 MR. LIESEMER: Object to the</p> <p>21 form of the question.</p> <p>22 THE WITNESS: To advise the</p> <p>23 trustees with respect to present</p> <p>24 claimants and the operation of the</p>	<p>1 MS. ALCABES: Page 10.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. BROWN:</p> <p>4 Q. Why don't you tell me what</p> <p>5 the general purpose of the consultation</p> <p>6 provisions is for? Well, it's actually</p> <p>7 for the TAC and for the Futures'</p> <p>8 Representative.</p> <p>9 A. There are a lot of decisions</p> <p>10 trustees have to make. This is</p> <p>11 consultation, not carving out consent for</p> <p>12 a moment, in terms of investments, in</p> <p>13 terms of selecting vendors, in terms of</p> <p>14 things that are not in the Trust</p> <p>15 Distribution Process, and that</p> <p>16 consultation is described in (e).</p> <p>17 Q. Okay. You mentioned in your</p> <p>18 answer the consent provisions.</p> <p>19 A. There are consent</p> <p>20 provisions.</p> <p>21 Q. And those appear in (f),</p> <p>22 correct, on page 11?</p> <p>23 A. Yes.</p> <p>24 Q. What is the rationale for</p>
Page 71	Page 73
<p>1 Trust.</p> <p>2 BY MR. BROWN:</p> <p>3 Q. And what do you mean by</p> <p>4 advise?</p> <p>5 A. Well, present their views to</p> <p>6 the trustees and under some</p> <p>7 circumstances, in the Trust Agreement,</p> <p>8 either give or do not give their consent</p> <p>9 to certain trustee action.</p> <p>10 Q. Is there a reason why the</p> <p>11 TAC members are personal injury asbestos</p> <p>12 lawyers?</p> <p>13 A. I can give you my personal</p> <p>14 view.</p> <p>15 Q. Okay.</p> <p>16 A. They represent the</p> <p>17 beneficiaries of the Trust, and I don't</p> <p>18 know who else you would appoint.</p> <p>19 Q. You are familiar, are you</p> <p>20 not, with the consultation provisions</p> <p>21 that appear in Section 2.2(e) of the</p> <p>22 Trust Agreement, correct?</p> <p>23 MR. GUY: What page?</p> <p>24 MR. BROWN: Page 10.</p>	<p>1 the consent provisions that appear in the</p> <p>2 Trust Agreement?</p> <p>3 A. As distinguished from</p> <p>4 consultation?</p> <p>5 Q. Or as distinguished from not</p> <p>6 having them at all?</p> <p>7 A. As I understand it, there</p> <p>8 are certain decisions that trustees make</p> <p>9 that are so important, they can only be</p> <p>10 made with the consent of both the TAC and</p> <p>11 the Future Claims Representative.</p> <p>12 Q. And that was a negotiated</p> <p>13 term of the overall Plan, correct?</p> <p>14 A. Well, it's been negotiated a</p> <p>15 lot before, and I am not sure if any</p> <p>16 specific provision was negotiated in this</p> <p>17 Plan.</p> <p>18 Q. Why can't the trustees make</p> <p>19 these decisions on their own?</p> <p>20 MR. GUY: Objection as to</p> <p>21 "these decisions."</p> <p>22 MR. BROWN: Well, let's back</p> <p>23 up.</p> <p>24 BY MR. BROWN:</p>

1 **Q. You will agree with me that**
 2 **Section 2.2(f) sets forth a number of**
 3 **different items for which the trustees**
 4 **need the consent of the TAC and the**
 5 **Future Claimants' Representative,**
 6 **correct?**

7 A. Yes.

8 **Q. It goes on from Romanette 1**
 9 **to Romanette 15, correct?**

10 A. Yes.

11 **Q. Why is there a need to have**
 12 **the consent of the Future Claimants'**
 13 **Representative and the TAC on these**
 14 **particular items rather than simply**
 15 **consultation?**

16 A. My answer is the same, and I
 17 will speak forgetting the TAC, as the
 18 Future Claimants' Representative, I want
 19 the right to under certain circumstances
 20 not agree to a decision by the trustees
 21 and have that be the end of the decision.

22 **Q. Well, it's not actually the**
 23 **end of the decision, is it?**

24 A. No. There are ways of

1 resolving that difference.

2 **Q. And what are those?**

3 A. Well, I may confuse this
 4 with the Manville Trust, but you can
 5 seek, shall we say, guidance from the
 6 bankruptcy court.

7 **Q. By that, you mean a ruling?**

8 A. Yes, yes.

9 **Q. If your consent has been**
 10 **unreasonably withheld in the views of the**
 11 **trustees?**

12 A. That's correct.

13 **Q. Is there anything in Section**
 14 **524(g) to your knowledge that requires a**
 15 **Trust, an asbestos Trust, to have a**
 16 **consultation and consent provisions that**
 17 **are set forth in this Trust Agreement?**

18 A. I do not know of anything in
 19 524(g) like that.

20 **Q. Do you know who the**
 21 **designated trustees are for the Asbestos**
 22 **PI Trust?**

23 A. Yes.

24 **Q. Okay. Who are they? Or**

1 **list of them.**

2 A. Dean Trafelet, Lewis
 3 Sifford, and Harry Huge.

4 **Q. And do you know each of**
 5 **those gentlemen?**

6 A. Well, in the case of
 7 Mr. Huge and Mr. Trafelet, I do know
 8 them. In the case of Mr. Sifford, I have
 9 met him on a number of occasions.

10 **Q. Okay. What is the**
 11 **professional background of Mr. Huge?**

12 A. Let's see. I first met him
 13 about 40 years ago at the Justice
 14 Department. I am sorry. He is a lawyer.
 15 He has been with the government. He has
 16 been in private practice. Do you want
 17 more?

18 **Q. Does he have experience with**
 19 **asbestos trusts?**

20 A. Yes, he does.

21 **Q. What is that experience?**

22 A. He is a trustee of Armstrong
 23 and I believe a trustee of OCF.

24 **Q. How long has he had the role**

1 **of trustee in Armstrong?**

2 A. I met with him shortly after
 3 he was appointed, and I should be able to
 4 remember that. I think four or five
 5 years.

6 **Q. And how about as a trustee**
 7 **in OCF?**

8 A. I don't know.

9 **Q. Okay. Why don't you tell me**
 10 **what the professional background of**
 11 **Mr. Sifford is?**

12 A. I know him less well.
 13 Mr. Sifford is a practicing lawyer in a
 14 law firm, and he is an Armstrong trustee,
 15 I believe. And that's, I believe, the
 16 first time I met him, and thus I looked
 17 him up. And according to
 18 Martindale-Hubbell, he does both personal
 19 injury plaintiff's work and personal
 20 injury defense work. I am getting close
 21 to exhausting my knowledge of him.

22 **Q. Okay. Is the personal**
 23 **injury work that he does, both defense**
 24 **and plaintiff's work, asbestos-related?**

1 A. It is not as far as I know.

2 Q. Do you know what it does
3 relate to?

4 A. No.

5 Q. Okay. Do you know how long
6 he has been a trustee of the Armstrong
7 Trust?

8 A. The same period of time
9 Mr. Huge has been, but I don't remember
10 when that started.

11 Q. I thought you said that one
12 was four to five years ago?

13 A. Four to five years ago. I
14 don't remember exactly.

15 Q. All right. And what is the
16 professional background of Mr. Trafelet?

17 A. Before I get to that, let me
18 explain. Armstrong was confirmed, and
19 for a long time, there was no activity
20 for reasons that allude me. So I can't
21 remember exactly when I got involved in
22 talking to those people.

23 Q. Okay.

24 A. Mr. Trafelet is a lawyer who

1 Q. And would I be correct that
2 he's been that for four or five years?

3 A. Yes.

4 Q. Let's go to Section 4.9 of
5 the Trust Agreement. Take a moment to
6 read that, if you would.

7 A. Okay.

8 Q. The second-to-the-last
9 sentence in Section 4.9 says, "No Trustee
10 shall act as an attorney for any person
11 who holds an asbestos claim."

12 Do you see that?

13 A. Yes.

14 Q. What's the reason for that?

15 A. To avoid conflicts.

16 Q. What type of conflicts?

17 A. Well, you are a trustee of a
18 Plan paying somebody; you shouldn't be
19 paying your client.

20 Q. Is there any other reason?

21 A. Not that I know of.

22 MR. BROWN: Mark this as
23 Austern-4.

24 (Austern-4 marked for

1 was a judge of, I believe, the Circuit
2 Court in Cook County, Illinois for a
3 period of time, and he is an asbestos
4 trustee of -- it seems to me, he is the
5 sole trustee of the Loomis Trust and also
6 a Futures Rep, I believe, at Armstrong.

7 Q. Okay. And he was one of the
8 gentlemen that you mentioned that, if I
9 remember correctly, the Asbestos PI
10 Committee, otherwise known as the ACC,
11 wanted to have the role that you have?

12 A. Yes.

13 Q. Do you know how long he has
14 been a trustee of the Loomis Trust?

15 A. Since it was confirmed. And
16 this I really should know, but I think it
17 was confirmed about three years ago.

18 Q. Okay. And do you know
19 whether he was the FCR in Armstrong
20 before a plan was confirmed?

21 A. I do not know.

22 Q. Okay. But he is the FCR for
23 the Trust?

24 A. Yes, I believe he is.

1 identification at this time.)

2 BY MR. BROWN:

3 Q. Exhibit-4, Mr. Austern, is
4 Exhibit 6 to the Exhibit Book. My first
5 question for you is, can you identify it?

6 A. It's the Asbestos Insurance
7 Transfer Agreement, which is part of the
8 Plan, as you point out.

9 Q. And I believe you said this
10 is one of the documents that you had
11 reviewed; am I correct?

12 A. Yes.

13 Q. Do you understand this
14 agreement?

15 A. Not in its entirety.

16 Q. Okay. Are there particular
17 provisions of this agreement that you do
18 not understand that you could direct my
19 attention to?

20 A. Well, I would have to look
21 at it for a moment. I am not sure I
22 understand all of the representations and
23 warranties and some of the terms in them.
24 There are two schedules, if I remember

1 correctly, here.

2 **Q. I think there is three.**

3 A. All right. I was never
4 quite sure I understood the constant or
5 individual differences between the
6 Schedules 2 and 3.

7 **Q. Okay. Other than what you**
8 **what you just described, do you generally**
9 **have a good handle on the Asbestos**
10 **Insurance Transfer Agreement?**

11 A. I wouldn't describe it as a
12 good handle, but I recognize some of the
13 paragraphs.

14 **Q. All right. Let me direct**
15 **your attention -- let's look at Section 1**
16 **on page 2, and you should probably look**
17 **at subsection (a). And then (d) is the**
18 **one I have the question on.**

19 A. Yes.

20 **Q. In (d), it says, "The**
21 **Transfer is not an assignment of any**
22 **insurance policy."**

23 **Do you see that?**

24 A. Yes.

1 A. In general.

2 **Q. Could you describe for me**
3 **what some of those duties are?**

4 A. Well, you have to report
5 claims.

6 **Q. Okay.**

7 A. And you have to, under
8 certain policies, confer with the
9 insurance company about what you are
10 settling and why and for how much. And,
11 forgetting individual policies for a
12 minute, under corporate policies, there
13 are certain audit rights that sometimes
14 exist as a condition of payment to the
15 insured.

16 **Q. Are you familiar with the**
17 **requirement in some policies that the**
18 **insurer have a right to defend the**
19 **insured?**

20 MR. LIESEMER: Object to
21 form.

22 THE WITNESS: As well as an
23 obligation.

24 BY MR. BROWN:

1 **Q. What is it?**

2 A. It's an assignment of a --
3 do you mean what is the Transfer
4 Agreement?

5 **Q. Yes. What is the transfer,**
6 **which is a defined term?**

7 A. Being transferred?

8 **Q. Yes.**

9 A. The proceeds.

10 **Q. Anything else?**

11 A. Well, I confess as the
12 Futures Claims Rep, I never got past the
13 proceeds because the money was what
14 interested me.

15 **Q. Okay. Have you reviewed any**
16 **of the Debtors' insurance policies?**

17 A. No.

18 **Q. Have you ever reviewed a**
19 **general liability insurance policy?**

20 A. Yes.

21 **Q. Do you have a general**
22 **understanding as to the duties and**
23 **obligations of an insured under general**
24 **liability insurance policy?**

1 **Q. Okay. And are you aware**
2 **that in some policies there is a right on**
3 **the part of the insurer to associate in**
4 **the defense of the insured?**

5 MR. LIESEMER: Object to
6 form.

7 THE WITNESS: I am not sure
8 I am familiar with that.

9 BY MR. BROWN:

10 **Q. Okay. Well, you indicated**
11 **that the one thing you knew that was**
12 **being transferred was proceeds.**

13 **Are you aware of anything**
14 **else that's being transferred pursuant to**
15 **the Asbestos Insurance Transfer**
16 **Agreement?**

17 A. I am not sure what you mean
18 by anything else, other than the money.

19 **Q. That's it?**

20 A. Well, other things may be
21 being transferred, but I can't think of
22 anything right now.

23 **Q. Okay. Do you have an**
24 **understanding as to whether the Asbestos**

Page 86

1 **PI Trust will become the insured under**
 2 **the policies that are listed on Schedule**
 3 **1 to this agreement?**

4 MR. GUY: Objection, calls
 5 for a legal conclusion.

6 THE WITNESS: Mr. Brown, I
 7 don't know. I certainly hope so.

8 BY MR. BROWN:

9 **Q. Do you have an understanding**
 10 **as to what, if anything, happens to the**
 11 **obligations of the insured under the**
 12 **policies on Schedule 1 if the Plan is**
 13 **confirmed?**

14 MR. GUY: Objection to form.

15 MR. LIESEMER: I join in
 16 that objection.

17 THE WITNESS: Let me make
 18 sure I understand the question.
 19 What happens to the obligations of
 20 -- if the policy was still in the
 21 hands of the Debtor, what would
 22 happen to the obligations of the
 23 Debtor and the rights of the
 24 insurance company?

Page 87

1 BY MR. BROWN:

2 **Q. I am not sure I understood**
 3 **the qualification. Let me try it a**
 4 **little differently.**

5 **To the extent that the**
 6 **Debtor has duties and obligations under**
 7 **one or more of its insurance policies, if**
 8 **this Plan is confirmed, what happens to**
 9 **those duties and obligations, as you**
 10 **understand it?**

11 MR. LIESEMER: Object to the
 12 form.

13 MS. BAER: I join in the
 14 objection.

15 THE WITNESS: The Plan is
 16 going to be administered pursuant
 17 to the Trust Distribution Process
 18 as it affects personal injury
 19 asbestos claims.

20 To that extent, the personal
 21 injury Trust, as far as I know, is
 22 not going to call up each and
 23 every insurance company and say
 24 "Can I settle this claim?" I hope

Page 88

1 that's responsive to your
 2 question.

3 BY MR. BROWN:

4 **Q. What is it going to do?**
 5 **What is the Trust going to do?**

6 MS. BAER: Objection to
 7 form.

8 MR. LIESEMER: I join.

9 THE WITNESS: It's going to
 10 settle claims pursuant to the
 11 Trust Distribution Process.

12 BY MR. BROWN:

13 **Q. Okay. Will the Debtors'**
 14 **insurers have any role in the handling**
 15 **defense or settlement of any claim**
 16 **submitted to the Asbestos PI Trust?**

17 MR. GUY: Objection.

18 MR. LIESEMER: Objection to
 19 form.

20 MR. GUY: Objection, calls
 21 for speculation.

22 MS. BAER: Objection, same.

23 THE WITNESS: Let me address
 24 audit rights. In my copious free

Page 89

1 time, Mr. Brown, I am the claims
 2 administrator of the Dow Corning
 3 Trust -- that is not an asbestos
 4 Trust -- and this issue has arisen
 5 in that context. And I dare say
 6 it may arise in the context of the
 7 W.R. Grace Trust.

8 If insurance companies
 9 object to paying because they do
 10 not have audit rights or because
 11 of any other input into the Trust,
 12 I dare say they are going to bring
 13 that to the attention of the
 14 trustees. And either that will be
 15 worked out between the trustees
 16 and the insurance company or
 17 some -- I don't like this phrase
 18 because I am not sure I know what
 19 it means -- but some coverage
 20 court will have to determine the
 21 rights of the insurance company as
 22 a function of the trustees'
 23 duties.

24 MR. BROWN: Could you read